

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Petition of the) RM No. 9258
Connecticut Department of Public Utility Control) DA 98-753
for Rulemaking on Technology-Specific Overlays)

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation ("MCI"), by its attorneys, respectfully submits these comments on the Public Notice released by the Commission seeking public comment on the petition by the Connecticut Department of Public Utility Control (the "Connecticut Department") for initiation of a rulemaking regarding the Commission's rules and policies requiring "technological neutrality" in numbering administration and prohibiting technology- or service-specific area code overlays.¹

INTRODUCTION AND SUMMARY

There is absolutely no legal, policy or factual reason to reopen the Commission's settled numbering policies or to reconsider the Commission's prohibition of technology-specific area code overlays. The Connecticut Department's petition for rulemaking (the "Petition")² asserts that conditions have changed since the Commission's landmark 1995 decision, in the *Ameritech Order*, that service-specific overlays are unjust and unreasonably discriminatory under Sections

¹ *Connecticut Department of Public Utility Control Files Petition for Rulemaking, Public Comment Invited*, Public Notice, DA 97-2234, RM. No. 9258 (Comm. Carr. Bur. released May 19, 1997)("Public Notice").

² *Petition of the Connecticut Department of Public Utility Control for Amendment to Rule Making* (filed March 30, 1998)(the "Petition"). Although styled as a petition for "amendment" to the Commission's rules, the Public Notice properly treats the Petition as a petition for rulemaking.

201(b) and 202(a) of the Communications Act, 47 U.S.C. §§ 201(b), 202(a).³ According to the Connecticut Department, the Commission's rules are no longer viable because of what it terms "the lack of competition experienced between the [wireless and wireline] industries in Connecticut." Petition at 5.

Whether or not this is in fact the case in Connecticut, it is certainly not the case nationwide, where cellular, PCS and fixed wireless providers—including WinStar, Teligent and others—are beginning to provide wireless alternatives to wireline local exchange services. In any event, the Commission's numbering policies are not based on the predicate that "substitutability is synonymous with competition." Petition at 9. Wireless and wireline services are clearly today not perfect substitutes, but over the longer term they are expected to become more price competitive; technological improvements and head-to-head competition will be further fueled in and among both sectors as wireless local number portability is deployed. More importantly, substitutability is not the *sine qua non* of the Commission's numbering policies; rather, the Commission has appropriately declared that telecommunications numbering should not favor or impede any carrier or technology—something that technology- and service-specific overlays clearly do—in order to ensure that numbering policy and access to numbering resources do not impose artificial constraints on the *development* of marketplace competition. Consequently, the Petition should be denied, the Commission's rules should not be amended, and no rulemaking should be initiated.

³ *Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois*, Declaratory Ruling and Order, IAD File No. 94-102, FCC 95-19, 10 FCC Rcd. 4596 (1995) ("Ameritech Order").

DISCUSSION

Contrary to the Connecticut Department's reasoning, the principles established in the *Ameritech Order* and codified in Section 52.9 of the Commission's Rules, 47 C.F.R. § 52.9(a)(1), are not dependent on any showing that wireless and wireline services are today "substitutes" as an economic matter. Whether or not that is the case, it is a fact that technological changes are laying the groundwork for the provision of wireless local exchange services, and that the Commission's numbering policies, as applied in the *Ameritech Order* and subsequent Commission decisions, are intended to provide neutral, long-term guidance permitting the marketplace to function, unimpeded by artificial numbering constraints. The Petition seeks to reverse this fundamental long-term policy in order to provide a preference for some carriers, and some customers, in fashioning Numbering Plan Area ("NPA") relief. MCI sympathizes with the Connecticut Department's need to reduce the costs and burdens of accelerating area code exhaust and relief activities on consumers, but permitting discriminatory numbering practices is not the way to achieve that objective.

I. NUMBERING POLICY REQUIRES TECHNICAL AND COMPETITIVE NEUTRALITY IN ORDER TO ENSURE EQUITABLE AND NON-DISCRIMINATORY TREATMENT OF ALL TELECOMMUNICATION PROVIDERS

A review of the Commission's numbering decisions demonstrates that the key element of numbering policy is that access to numbering resources must be nondiscriminatory and competitively neutral. This does not mean, as the Petition asserts, that all telecommunications services and carriers must compete directly, as perfect economic substitutes, in order to qualify for nondiscriminatory access to telephone numbers.

Section 251(e) of the Telecommunications Act of 1996, 47 U.S.C. § 251(e)(6), requires that the Commission make telephone numbers available on an equitable basis. Following congressional passage of the Act, the Commission promulgated rules implementing Section 251(e) that formalized existing Commission number administration policy objectives. Section 52.9 of the Commission's Rules seeks "[t]o ensure that telecommunications numbers are made available on an equitable basis."⁴ As such, the administration of telecommunications numbers shall:⁵

- (a) facilitate entry into the telecommunications marketplace by making telecommunications numbering resources available on an efficient, timely basis to telecommunications carriers;
- (b) not unduly favor or disfavor any particular telecommunications industry segment or group of telecommunications carriers; and
- (c) not unduly favor one telecommunications technology over another.

These numbering principles have been in place for several years. The Commission first applied them in 1995 when addressing a proposed service-specific area code relief plan by Ameritech.⁶ The principles were confirmed without further explanation in the Commission's *NANP Order*, which set forth the foundation for future numbering administration and created the North American Numbering Council ("NANC").⁷ Following enactment of the 1996 Act, the

⁴ 47 C.F.R. § 52.9(a)(1).

⁵ *Id.*

⁶ *Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois*, Declaratory Ruling and Order, IAD File No. 94-102, FCC 95-19, 10 FCC Rcd. 4596 (1995) ("Ameritech Order").

⁷ *Administration of the North American Numbering Plan*, Report and Order, CC Docket No. 92-237, FCC 95-283, July 13, 1995 ("NANP Order").

Commission reaffirmed these principles and promulgated its formal Section 52.9 numbering administration rules in the *Local Competition Second Report and Order*.⁸

The Commission has analyzed two proposed NPA relief plans that went against its numbering principles and rules. The first occurred in 1995, when Ameritech announced that the supply of NXXs would exhaust within the 708 NPA and proposed a service-specific overlay relief plan consisting of an “exclusion proposal,” a “take-back proposal” and a “segregation proposal.”⁹ The Commission held that this plan violated its numbering policies and ordered Ameritech not to implement the plan.¹⁰

The Commission examined Ameritech’s proposal under Sections 201(b) and 202(a) of the Communications Act of 1934. The Commission found that Ameritech’s plan would be unreasonably discriminatory under Section 202(a) because it would discriminate between classes of carriers and confer significant competitive advantages on the wireline companies in competition with paging and cellular companies.¹¹ The Commission found that wireline carriers would enjoy a competitive advantage because only wireless customers would suffer the cost and inconvenience of having to surrender existing numbers.¹² Furthermore, the Commission held that Ameritech’s plan was unjust and unreasonable under Section 202(b) in that it would place a

⁸ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Second Report and Order, CC Docket No. 96-98, 11 FCC Rcd. 19392 (1996) (“Local Competition Second Report and Order”).

⁹ *Ameritech Order* at ¶ 21.

¹⁰ *Id.* Ameritech’s proposal contained three basic components: (1) telephone numbers in the existing NPA (708) would continue to be assigned to wireline carriers, while excluding paging and cellular carriers from such assignment (“exclusion proposal”); (2) paging and cellular carriers would be required to take back from their subscribers and return to Ameritech all 708 telephone numbers previously assigned, while wireline carriers would not be required to do so (“take-back proposal”); and (3) assigning all numbers to paging and cellular carriers exclusively from a different existing NPA (312) and a new NPA (630) while wireline carriers would continue to receive number assignments from NPA 708 (“segregation proposal”).

¹¹ *Id.* at 26-27.

disproportionate burden upon wireless carriers,¹³ while providing advantages to wireline carriers.¹⁴ The Commission therefore held that the assignment of numbers based on whether a carrier provides wireless service is not consistent with appropriate telephone numbering principles.¹⁵

The second application of the Commission's number administration principles occurred in 1996, following a Texas Public Utility Commission ("Texas PUC") order setting out an immediate wireline geographic area code split with prospective "wireless-only" overlays in the Dallas and Houston metropolitan areas.¹⁶ The Commission concluded that the Texas wireless-only NPA overlay violated its number principles.¹⁷ It noted that service-specific and technology-specific overlays do not further the federal policy objectives of the North American Numbering Plan because they "hinder entry into the telecommunications marketplace by failing to make numbering resources available on an efficient, timely basis to telecommunications services providers."¹⁸ The Commission concluded that service-specific overlays that deny particular carriers access to numbering resources because of the technology they use to provide their services are not "technology neutral" and thus unlawful.¹⁹

In this light, it is apparent that the Commission has articulated numbering policies that are intended to govern the long-term development of the telecommunications industry. While the *Ameritech Order* concludes (correctly) that service-specific overlays provide competitive

¹² *Id.* at 27.

¹³ *Id.*

¹⁴ *Id.* at 35.

¹⁵ *Id.* at 29.

¹⁶ *Local Competition Second Report and Order* at 294-25.

¹⁷ *Id.* at 304.

¹⁸ *Id.* at 305.

advantages to some carriers, as the *Texas PUC Order* makes clear, the overarching policy concern is that discriminatory treatment of some carriers or technologies will “hinder entry into the telecommunications marketplace.” Contrary to the Connecticut Department’s contentions, the Commission has not insisted that any showing of direct substitutability, or even effective present competition, be made in order to preclude NPA relief plans that allocate numbers discriminatorily based on service or technological characteristics.

Doing so would, on the other hand, undermine the central basis for the Commission’s policy of competitive and technologically neutral numbering administration by creating artificial, regulatorily-imposed constraints on access to numbers. In an era where telecommunications law and policy is striving to reduce and eliminate barriers to competition—both present and potential future competition—there is no justification for NPA relief plans that discriminate against any class of providers. While direct wireline-wireless competition may not have developed as fast as the Commission anticipated in 1995, the fact that such competition remains a realistic possibility—and is actually beginning in some markets—defeats the central justification for the Petition. Thus, nothing has changed since 1995 that would warrant any change in the prohibition of technology-specific or service-specific area code overlays.

II. SERVICE-SPECIFIC NPA OVERLAYS WOULD HARM EFFORTS TO IMPLEMENT WIRELESS-WIRELINE LNP AND NUMBER POOLING AND IMPEDE IMPORTANT NUMBER CONSERVATION EFFORTS

The Public Notice inquires whether service-specific overlays would “affect number conservation, local number portability for both wireless and wireline carriers, number pooling

¹⁹ *Id.*

and any other relevant initiatives.” Public Notice at 2. The simple fact is that any wireless-specific NPA overlay would significantly complicate efforts to integrate wireless carriers into local number portability (“LNP”), number pooling and related number conservation efforts, and would erect a significant barrier to efforts to integrate wireless and wireline local number portability.

The use of service-specific overlays for wireless carriers would make inclusion of wireless providers in LNP and number pooling, which already faces technical challenges being examined by the NANC, even more difficult, if not impossible. First, number pooling allows numbers to be assigned as efficiently as possible, it discourages the wasteful assignment of telephone numbers and allows access to individual telephone numbers that would otherwise sit unused. Second, LNP and number pooling depend on use of Location Routing Numbers (“LRNs”) that are assigned on an NPA-specific basis. Third, number pooling will initially be deployed only inside wireline “rate centers,” which may or may not correspond with wireless-specific NPAs (and will ordinarily be much smaller). These and other issues are currently being addressed by NANC’s Wireless-Wireline Integration Task Force, a working group that has struggled for more than a year to resolve fundamental technical differences between wireline and wireless networks, and number utilization practices, that affect the seamlessness of LNP and pooling between the industries. Placing wireless carriers in separate NPAs would add yet another layer of complexity to this task.

Significantly, permitting wireless-only overlays would also impede number conservation efforts. Given the rapid and accelerating pace of depletion of telephone numbers,²⁰ isolating any class of service providers in their own NPAs would create perverse incentives for increased reservation, assignment and waste of numbers. Instead of facing the same constraints as other (*i.e.*, wireline) carriers in the event of an NPA “jeopardy” situation, wireless carriers operating in a separate, wireless-only NPA would not be required to implement the same number conservation measures, and could continue to assign new numbers without regard to the threatened status of other area codes. Indeed, from this perspective, implementing service-specific overlays can discriminate against the carriers who are *not* part of the overlay plan, as their access to numbers may be constrained by mandatory conservation methods (such as NXX lotteries, etc.) that are not imposed on wireless carriers. Adoption of the Petition would provide the wireless carriers of Connecticut an unfair numbering advantage and negate any benefits to be gained by future implementation of a seamless national number utilization and conservation process.

The optimal solution—and in MCI’s view the only sensible approach—to the geometrically rising pace of NPA relief activities is a fundamental revision in the way the telecommunications industry assigns numbers. This will entail true, individual telephone level number pooling, without service provider “inventories,” so that all carriers obtain numbers, only as needed, from a commonly managed resource. The NANC has identified individual telephone number pooling as the permanent number pooling mechanism that would provide the maximum


²⁰ See “Where Have All the Numbers Gone,” Economics & Technology, Inc. (March 1998).

benefit to both subscribers and service providers. Whatever the current state of competition between wireless and wireline carriers may be today, it is clear that for such a system (or any system of long-term number conservation and optimization) to work, *all carriers must be included in the numbering assignment process on an equal basis*. Wireless-specific or other technology-specific overlays would seriously impede attempts to incorporate all carriers into uniform system of individual telephone number pooling, and thus present a very serious threat to the stability and long-term survivability of the North American Numbering Plan.

CONCLUSION

For all these reasons, the Connecticut Department's petition for rulemaking should be denied. No rulemaking should be initiated. The Commission should maintain its settled numbering policies and its prohibition of technology- or service-specific area code overlays.

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CERTIFICATE OF SERVICE

I, Amy E. Wallace, do hereby certify on this 7th day of May, 1998, that I have served a copy of the foregoing document via *messenger and US Mail, postage pre-paid, to the parties below:


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